

EXTENSIONS OF REMARKS

FEDERAL WETLANDS JURISDICTION ACT OF 2004

HON. RICHARD H. BAKER

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 15, 2004

Mr. BAKER. Mr. Speaker, today I am introducing the Federal Wetlands Jurisdiction Act of 2004. Joining me in cosponsoring this important legislation are the Chairman of the House Transportation and Infrastructure Committee DON YOUNG, Chairman of the House Transportation and Infrastructure Subcommittee on Water Resources and the Environment JOHN DUNCAN, former Energy and Commerce Committee Chairman BILLY TAUZIN, Western States Caucus Chairman CHRIS CANNON, and fellow conservationist Congressmen MARION BERRY, ROB BISHOP, BUTCH OTTER, JOHN DOOLITTLE, RANDY FORBES, and DOUG OSE.

The legislation my colleagues and I are introducing today does two things. First, the legislation clearly defines the areas over which the Federal government has jurisdiction as "wetlands" or "waters of the United States" under Section 404 of the Clean Water Act of 1977. Second, the legislation concentrates the implementation of the Section 404 "wetlands" permitting program in one Federal agency: the U.S. Army Corps of Engineers. The legislation does not affect any part of the Clean Water Act other than Section 404.

On January 9, 2001, the Supreme Court in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers* held that the Clean Water Act does not provide the Federal government jurisdiction over areas known as "isolated wetlands." The Supreme Court case dealt with an area that was found to be jurisdictional to the Section 404 program under an Environmental Protection Agency and U.S. Army Corps of Engineers interpretation of the Act known as the "migratory bird rule." The "migratory bird rule" made jurisdictional to the Section 404 program any wetland that migratory birds could inhabit. The Supreme Court found that this interpretation was beyond the bounds of the Act. However, the Supreme Court was not specific concerning the exact areas that are "isolated wetlands."

The uncertainty about the jurisdiction of the Section 404 program that resulted from the SWANCC decision has not been resolved by interpretive rulings by the Environmental Protection Agency and the U.S. Army Corps of Engineers. Applications of SWANCC by the Corps and the EPA in determinations of Section 404 jurisdiction have resulted in a range of judicial decisions that are not consistent across the Nation. The resulting uncertainty is causing difficulty for my constituents and I am sure for the constituents of many Members of this House.

In fact, it is not impractical to say that there are literally hundreds of agency interpretations of SWANCC's impact because the Corps and EPA have essentially allowed individual per-

sonnel to make their own judgments on a case-by-case basis. Could you imagine the speed limit being set by individual police officers on a case-by-case basis?

I believe that Congress must end this uncertainty by stating as clearly as possible the areas that we intend to be jurisdictional to the Section 404 program of the Clean Water Act. While the SWANCC decision involved a Section 404 matter, the judicial decision can be interpreted to apply to the entire Clean Water Act. The legislation my colleagues and I are introducing today, however, only applies to Section 404 of the Clean Water Act. Indeed, there may be sound policy reasons to have different jurisdictional limits for other sections of the Act.

The legislation that I am introducing today provides Federal Section 404 jurisdiction over the territorial seas, traditionally navigable waters, tributaries that flow into traditionally navigable waters and the wetlands adjacent to these waters. Excluded from jurisdiction are man made connectors, such as ditches and underground culverts, and the wetlands connected thereto. The legislation also makes clear that the Section 404 program does not apply to so-called "ephemeral streams" or underground water. Finally, the legislation provides a mechanism by which landowners expeditiously can obtain a determination of whether wetlands areas on their property are within the jurisdiction of the Section 404 program.

Mr. Speaker, this legislation will exclude from areas of Federal jurisdiction areas that Congress clearly never intended to be jurisdictional to the federal government. For example, on March 30, 2004, one of my constituents testified about this problem at an oversight hearing of the Water Resources and Environment Subcommittee of the Transportation and Infrastructure Committee. On his land were some puddles of water, which is very typical of our part of the country. A tractor had driven through one of the puddles on a rainy day and down to and through a small drainage ditch on the property. Because the tractor left a rut that filled up with water from the puddle down to the stream, Corps field officials asserted jurisdiction over the puddles. The only connection between these puddles, which I believe are true "isolated wetlands," and the small drainage ditch was this man-made rut accidentally left behind by the tractor. Surely, Mr. Speaker, my colleagues will agree with me that Congress never intended to assert Federal jurisdiction over such areas of land. This legislation will exclude these areas from Federal jurisdiction.

I believe that the definition of jurisdiction contained in this legislation is consistent with the SWANCC decision, the intent of Congress in enacting Section 404 of the Clean Water Act and the traditional division of jurisdiction between the Federal government and the States and local governments.

This legislation also addresses a problem that has confounded my constituents since the original enactment of the Section 404 program

in the Federal Water Pollution Control Act of 1972. When the Section 404 program was enacted, there was a disagreement between the House and Senate regarding whether the newly created Environmental Protection Agency or the U.S. Army Corps of Engineers should have jurisdiction over the program. The conferees settled this disagreement by giving both agencies jurisdiction over the program. The result for my constituents often has been chaos. The U.S. Army Corps of Engineers implements the Section 404 program, but must also apply rules adopted by the Environmental Protection Agency; the Corps of Engineers makes jurisdictional determinations in the field, but the EPA, under a 1979 Attorney General's Opinion, has final say in this area; and, finally, the EPA can veto a decision by the Corps of Engineers to issue a Section 404 permit. No other Federal regulatory program that I know of is implemented by two Federal agencies. My legislation resolves this inherent conflict by placing responsibility for the implementation of the Section 404 program solely in the hands of the U.S. Army Corps of Engineers, which I believe has incomparable expertise in wetlands management.

Mr. Speaker, the Federal Section 404 wetlands permitting program is a very controversial program. In general, Americans want to see wetlands preserved. However, this general objective hits close to home when the wetlands in question are on privately owned property—as are 75 percent of the Federal jurisdictional wetlands. The Section 404 program can prevent or severely restrict the private use of privately owned property. Unfortunately, many of my constituents face these consequences under the Section 404 program.

Mr. Speaker, the very least we can do for the citizens of this Nation is to define clearly those areas that are subject to the jurisdiction of this regulatory program and to designate one Federal agency to implement the program. The legislation that I am introducing today does just that and no more than that. I believe, also, that our bill is pro-environment because it will diminish the number of individual landowners who unknowingly disturb or destroy wetlands. If a constituent knows ahead of time that a parcel of land is a wetland, they will refrain from buying it or developing it. Isn't precaution an effective medicine? I believe it is, and I believe this bill is the right prescription. I encourage my colleagues to support this legislation and ensure its timely enactment.

ABA CONFERS HIGHEST HONOR ON
THE REVEREND ROBERT F.
DRINAN

HON. BARNEY FRANK

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Monday, July 19, 2004

Mr. FRANK of Massachusetts. Mr. Speaker, I am very proud to serve in this House as the

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

successor to one of its most distinguished former Members, the Reverend Robert F. Drinan, who represented the Fourth District of Massachusetts from 1970 to 1980. Father Drinan came to Congress after a very distinguished career as a legal scholar and administrator, having served with enormous distinction as Dean of the Law School at Boston College. For 10 years he played a leadership role in this body on a wide range of issues, significantly enriching the deliberations of the House with his vigorous intellect and strong commitment to the public interest.

Upon leaving Congress in 1981, he resumed his academic career and has for more than 20 years continued to make extraordinary moral and intellectual contributions to the law. To take just one example, no one in the world has done more to advance the cause of international human rights—defending basic human rights without regard to the ideology of those would deny them—than Father Drinan, both as a Member of Congress and subsequently.

In recognition of his extraordinary career—which still goes forward—the American Bar Association will present its highest honor to him on August 9 at the ABA Annual Meeting in Atlanta. As ABA President Dennis Archer said in announcing the decision to award the ABA medal to Father Drinan, “By his standards of leadership, he contributes to the luster and dignity of our award.”

Mr. Speaker, the American Bar Association in explaining its decision to confer this award on a man who “has demonstrated to lawyers what it means to be committed to public service and to countless law students what is embodied in the highest dedication to ethical, moral legal practice” gives a summary description of his extraordinarily productive career. I ask that this announcement by the American Bar Association be printed here.

ABA CONFERS HIGHEST HONOR ON FORMER CONGRESSMAN, THE REV. ROBERT F. DRINAN, GEORGETOWN LAW PROFESSOR

CHICAGO, June 28, 2004.—The American Bar Association today announced it will present the 2004 ABA Medal, the association's highest honor, to the Rev. Robert F. Drinan, S.J., a former congressman, law school dean, ethicist and human rights activist.

ABA President Dennis W. Archer will present the medal at 11:30 a.m. Aug. 9 during the opening session of the association's House of Delegates during the 2004 ABA Annual Meeting in Atlanta.

“In an amazing career that has spanned more than half a century, Father Drinan has never faltered in his extraordinary humanitarian efforts and support for justice under the law. He has demonstrated to lawyers what it means to be committed to public service and to countless law students what is embodied in the highest dedication to ethical, moral legal practice. By his standards of leadership, he contributes to the luster and dignity of our award,” said Archer in announcing the selection.

The ABA medal recognizes exceptionally distinguished service to the cause of American jurisprudence.

In nominating Drinan, admirers described him as “an eloquent and effective advocate for the most downtrodden in society,” someone “active in so many areas of the law and human rights that there is not enough space to catalog them,” and such a “towering figure in the academic, professional, clerical and public service fields” that he “is the stuff of which legends are made.” They noted the ABA Section of Individual Rights and

Responsibilities created the Robert F. Drinan Distinguished Service Award in 2001, recognizing his leadership in protecting and advancing human rights, civil liberties and social justice.

Drinan represented the Fourth District of Massachusetts in the U.S. House of Representatives from 1971 to 1981, and was a member of House committees on the Judiciary, Internal Security, and Government Operations and of the House Select Committee on Aging. He chaired the Subcommittee on Criminal Justice of the House Judiciary Committee, and was a member of the Executive Committee of the Democratic Study Group of the Environmental Study Conference and the Steering Committee of Members of Congress for Peace Through Law. As a congressman, he traveled in congressional delegations and on human rights missions around the world, and he has subsequently served as an election observer in Armenia and Panama.

Drinan has been a professor at Georgetown University Law Center since 1981. He began teaching at Boston College Law School, where he became a professor in 1966 and also served as dean. He has been a visiting professor or guest lecturer at universities and law schools internationally and across the U.S.

He is a prolific author, and his eleventh book, “Can God and Caesar Coexist Balancing Religious Freedom and International Law,” is due to be published in August by Yale University Press. His previous books all have dealt with major public policy issues. He is the recipient of 21 honorary doctoral degrees.

In the ABA, Drinan is among a very few people ever to serve as chair of two distinct substantive legal sections: the Section of Family Law in 1966–67 and the Section of Individual Rights and Responsibilities in 1990–91. He also is a past chair of the association's Standing Committee on Professionalism and Standing Committee on World Order Under Law, and a former member of the association's policy-making House of Delegates.

In other law-related organizations, he has been vice president of the Massachusetts Bar Association and chair of its Committee on the Administration of Justice, chair of the Boston Bar Association Committee on Family Law, chair of the Massachusetts Advisory Committee to the U.S. Commission on Civil Rights, and a member of the National Executive Committee of the American Judicature Society and of the Executive Committee of the Association of American Law Schools.

Drinan's public service has taken him to leadership roles in many other organizations. He is a member of the National Governing Board for Common Cause and the National Council for the Lawyers Committee for Human Rights, and the Board of Directors of People for the American Way, and a past president of Americans for Democratic Action.

He was a founder and member of the Board of Directors of the Lawyers Alliance for Nuclear Arms Control, and a member of the boards of directors for Bread for the World, the Council for a Livable World Educational Fund and the NAACP Legal Defense and Educational Fund, Inc., and an advisor to the U.S. Holocaust Memorial Commission.

He served on the Advisory Committee to the U.S. National Archives and the Advisory Board of the Union of Councils for Soviet Jews. He was vice chairman of the National Advisory Council for the American Civil Liberties Union and is a member of the Helsinki Watch Committee.

Drinan chaired the International Committee for the Release of Anatoly Scharansky and Peace PAC, is a fellow of the American Academy of Arts and Sciences and

the American Bar Foundation, and was a founder of the National Interreligious Task Force on Soviet Jewry. He is a past board member of the National Board of Trustees of the National Conference of Christians and Jews and a member of the American Law Institute.

With more than 400,000 members, the American Bar Association is the largest voluntary professional membership organization in the world. As the national voice of the legal profession, the ABA works to improve the administration of justice, promotes programs that assist lawyers and judges in their work, accredits law schools, provides continuing legal education, and works to build public understanding around the world of the importance of the rule of law in a democratic society.

PERSONAL EXPLANATION

HON. JOHN P. MURTHA

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Monday, July 19, 2004

Mr. MURTHA. Mr. Speaker, on July 15, 2004, on rollcall No. 378 regarding H. Res. 713, I inadvertently voted “yea” but meant to vote “nay.”

Similarly, on rollcall No. 379 regarding H. Con. Res. 462, I inadvertently voted “yea” but meant to vote “nay.”

DEPLORING MISUSE OF INTERNATIONAL COURT OF JUSTICE BY UNITED NATIONS GENERAL ASSEMBLY FOR POLITICAL PURPOSE

SPEECH OF

HON. MARK UDALL

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 14, 2004

Mr. UDALL of Colorado. Mr. Speaker, I rise in support of this resolution, and I would like to elaborate upon the important issues that are involved in securing Israel and peace in the Middle East.

As a strong supporter of Israel, I believe that Israel has every right to defend itself and that a security fence is an understandable response to three years of terrible suicide bombings and other attacks that Israeli citizens have suffered through.

I also believe it was unfortunate that the issue of the fence was brought to the International Court of Justice at all. But the issue was brought to the ICJ, and the ICJ has now made its non-binding ruling. I am disappointed and puzzled that the opinion of the court does not seem to recognize very real Israeli security concerns. Nor does it tell us how Israel or any other state is supposed to defend itself from non-state threats.

But I'm not certain that passing this resolution today will help to advance the cause of peace. And advancing the cause of peace would go a long way toward restoring our credibility in that part of the world where we need it most. To advance the cause of peace, the resolution might have mentioned the thousands of Palestinians who have also died in the violence of the last three years. To advance the cause of peace, the resolution